



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

Ashok Tankha
Of Counsel, Lipton, Weinberger & Husick
36 Greenleigh Drive
Sewell NJ 08080

COPY MAILED

MAR 05 2007

OFFICE OF PETITIONS

In re Application of :
Bjornson et al. : DECISION ON PETITION
Application No. 10/700,071 : and
Filed: November 3, 2003 : NOTICE OF NONACCEPTANCE
Title: METHOD AND APPARATUS : OF POWER OF ATTORNEY
FOR HIGH-PERFORMANCE SEQUENCE :
COMPARISON:

This is a decision on both the Petition to Expedite Review and the Petition for Revival of an Application for Patent Abandoned Unintentionally, both filed February 20, 2007. This decision is mailed in light of the supplement to petition filed March 1, 2007.

The petition includes payment of the petition fee under 1.182, along with an adequate showing that the relief requested is warranted. Accordingly, the petition is being considered out of turn.

The petition under § 1.182 is GRANTED.

The petition under § 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed June 15, 2006. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply considered timely filed and no extension of time considered obtained, the application became abandoned effective September 16, 2006. The instant petition precedes the mailing of a courtesy Notice of Abandonment.

With the supplement to petition, petitioner submitted a proper 3.73(b) statement authorizing assignee Turbo Worx, Inc. to take

action in this case. See 37 CFR 3.73. The petition did not as stated include a separate power of attorney. Assignee needs to complete a power proper of attorney to have an attorney of record in this case. Nonetheless, the petition is considered, pursuant to 37 CFR 1.34, as having been filed by a registered patent attorney.

The petition includes the required reply in the form of an amendment and payment of the petition fee. No terminal disclaimer is required.

The statement of unintentional delay is made by the assignee. The record supports a conclusion that Turbo Worx, Inc. was the assignee at the time the response to the Office action was due. While the Office reserves the authority to require further information concerning the cause of abandonment and delay in filing a petition to revive, the Office relies upon the applicant's duty of candor and good faith and accepts the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" without requiring further information in the vast majority of petitions under 37 CFR 1.137(b). This is because the applicant is obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when a practitioner provides this statement to the Office. In addition, providing an inappropriate statement in a petition under 37 CFR 1.137(b) to revive an abandoned application may have an adverse effect when attempting to enforce any patent resulting from the application. See *Lumenyte Int 'l Corp. v. Cable Lite Corp.*, Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

Technology Center AU 2163 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed February 20, 2007 (and resubmitted March 1, 2007).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looping "N" and a cursive "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions